THE BOMBAY HABITUAL OFFENDERS RESTRICTION ACT, 1947.

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BOMBAY ACT No. LI OF 1947.[1]

[THE BOMBAY HABITUAL OFFENDERS RESTRICTION ACT, 1947.]

[*31st December 1947.*]

An Act to make provision for restricting the movements of habitual offenders in the Province of Bombay, for requiring them to report themselves and for placing them in settlements.

WHEREAS it is expedient to make provision for restricting the movements of habitual offenders in the Province of Bombay, for requiring them to report themselves and for placing them in settlements; It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called the Bombay Habitual Offenders Restriction Act, 1947.

(*2*) It extends to the whole of the Province of Bombay.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

V of 1898.

(*1*) "Code" means the Code of Criminal Procedure, 1898;

(*2*) "order of restriction" means an order made under this Act requiring a person other than a child as defined in the [2] Bombay Children Act, 1924—

Bom. XIII of 1924.

(*a*) to restrict his movements to any area within the Province specified in the order, or

(*b*) to report himself at the times and at the places and in the manner specified in the order, or

(*c*) to do both;

(*3*) "order of settlement" means an order made under section 15 placing a person in a settlement established under the said section;

(*4*) "prescribed" means prescribed by rules made under this Act;

(*5*) words and expressions used but not defined in this Act shall have the meanings assigned to them in the Code.

Order of restriction against habitual offenders.

3. (*1*) In any case in which a Magistrate may under the provisions of section 110 of the Code require a person to show cause why he should not be ordered to execute a bond for his good behaviour, the Magistrate may in lieu of or in addition to so doing require such person to show cause why an order of restriction should not be made against him.

Joint proceedings and record.

(*2*) If the Magistrate in addition to requiring such person to show cause why he should not be ordered to execute a bond for his good behaviour requires him to show cause why an order of restriction should not be made against him, the proceedings in respect of the order of restriction may be taken jointly with the proceedings in respect of security and may be included in and form part of the same record.

Procedure in making order of restriction.

4. Whenever a Magistrate acting under section 3 deems it necessary to require a person to show cause why an order of restriction should not be made against him, he shall follow, as nearly as may be, the procedure laid down in sections 112, 113, 114, 115 and 117 of the Code for an order requiring security for good behaviour:

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[1] For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1947, Part V, page 296.

[2] See now the Bombay Children Act, 1948 (Bom. 71 of 1948).

Provided that the order in writing referred to in section 112 of the Code shall, in addition to setting forth the substance of the information received, state the term not exceeding three years during which the order of restriction shall be in force although it need not state whether the order of restriction shall be an order requiring him to restrict his movements to any area or requiring him to report himself at any place or requiring him to do both.

Issue of warrant in lieu of or in addition to summons.

5. The provisions of section 90 of the Code shall be applicable in respect of any proceedings under this Act as if they were proceedings under the Code.

Discharge of person informed against.

6. If upon an enquiry made in accordance with the preceding sections, the Magistrate is of opinion that it is not necessary to make an order of restriction against the person in respect of whom the enquiry is made, he shall make an entry to that effect on the record, and if he does not order the execution of a bond for good behaviour he shall, if such person is in custody for the purposes of such enquiry only, release him or if such person is not in custody, discharge him.

Making of order of restriction.

7. If upon an inquiry as aforesaid, the Magistrate is of opinion that it is necessary to make an order of restriction against the person in respect of whom the inquiry is made, the Magistrate shall make an order accordingly:

Provided that the Magistrate shall not make an order of restriction against any person against whom he makes an order under section 118 of the Code requiring such person to execute a bond for his good behaviour:

Provided further that no order of restriction shall be made for a term exceeding three years or for a term longer than that specified in the order referred to in the proviso to section 4.

Restriction order under section 123 (*3*) of the Code.

8. (*b*) A Court acting under sub-section (*3*) of section 123, or an Appellate Court acting under section 406, of the Code, may in lieu of the order requiring any person to give security under section 110 of the Code make an order of restriction for any period not exceeding that for which the security was required to be given.

Restriction order against convicted offenders.

(*2*) In any case in which a Court or Magistrate is empowered to make an order against any convicted person under section 565 of the Code such Court or Magistrate, may, if it or he thinks fit, at the time of passing sentence on such person and in lieu of making an order as provided in the said section make an order of restriction against such person for a period not exceeding three years from the date of the expiration of such sentence.

(*3*) If such conviction is set aside on appeal or otherwise, the order of restriction shall become void.

(*4*) No order of restriction shall be made against any person under this section unless he has been given an opportunity of showing cause why such order should not be made.

Particulars to be specified in restriction order.

9. Every order of restriction made under this Act shall state whether the person against whom the order is made is required to restrict his movements or is required to report himself or is required to do both. The order shall also specify the area and the nature of the restrictions imposed and the places, the times, and the manner of report, as the case may be. The order shall also contain such other particulars as may be prescribed.

Residence or means of livelihood within area of restriction.

10. (*1*) No order shall be made restricting the movements of any person to any particular area unless the Court or Magistrate making the order is satisfied that such person has adequate means of earning his livelihood within such area or ordinarily resides in such area.

(*2*) Before making an order restricting the movements of any person to any area, the Court or Magistrate shall record and consider any objection which such person may urge in regard to the area to which his movements are proposed to be restricted.

Power to cancel or modify order of restriction.

11. (*1*) Where under an order of restriction made against him any person's movements have been restricted to any area, if the said area is Greater Bombay or a part thereof the Chief Presidency Magistrate, or if the said area is a district or part of a district the District Magistrate, may at any time, on his own motion or on an application of such person and for sufficient reasons to be recorded in writing, make an order cancelling or modifying the order of restriction.

(*2*) Such order of modification may provide—

(*a*) that the said person shall report himself at the times and at the places and in the manner specified in the order; or

(*b*) that he shall restrict his movements either to the area in which he ordinarily resides or to any other area in which the Magistrate is satisfied he has reasonable prospects of earning his livelihood.

(*3*) The Provincial Government may authorize any Presidency Magistrate or any Sub-Divisional Magistrate to make the order of modification referred to in sub-section (*2*) in respect of a person within his jurisdiction.

Power to substitute restriction order for bond for good behaviour or for order for notifying address.

12. Where an order requiring security for good behaviour has been made against any person under the Code or an order has been made against any person under section 565 of the Code, whether before or after the coming into operation of this Act, the Chief Presidency Magistrate in Greater Bombay and elsewhere the District Magistrate may, at any time, before the period of security or the term of the order under section 565, as the case may be, has expired make in lieu thereof an order of restriction:

Provided that—

(*1*) the period of the order of restriction shall not exceed the unexpired portion of the period of security or the term of the order under section 565; and

(*2*) no order of restriction shall be made against any person under this section unless he has been given an opportunity of showing cause why such order should not be made.

Appeal.

13. An appeal shall lie against an order of restriction—

(*i*) to the District Magistrate if such order has been made by a Magistrate subordinate to him;

(*ii*) to the Court of Session if such order has been made by a District Magistrate;

(*iii*) to the High Court in any other case.

Code to apply to appeals.

14. Subject to the provisions of section 13, the provisions of the Code shall apply to appeals under this Act.

Power to establish settlements and place habitual offenders therein.

15. (*1*) For the purposes of this Act, the Provincial Government may establish industrial, agricultural or reformatory settlements.

(*2*) The Provincial Government or any officer authorized by the Provincial Government in this behalf may in lieu of an order of restriction made against any person under this Act make an order directing such person to be placed in a settlement established under sub-section (*1*) for a period not exceeding the period for which the order of restriction has been made.

(*3*) The Provincial Government or the officer authorized under sub-section (*2*) may at any time, by general or special order, direct any person who may be in any settlement,

(*a*) to be discharged, or

(*b*) to be transferred to some other settlement.

Arrest of person contravening order of restriction or of settlement.

16. (*1*) Whoever being a person against whom an order of restriction or an order of settlement has been made—

(*a*) is found beyond the limits of the settlement or the area to which his movements have been restricted, without the prescribed pass, or in a place or at a time not permitted by the conditions of his pass, or

(*b*) escapes from a settlement, may be arrested without warrant by any police-officer or a police-patel, and may be taken before a Magistrate, who, on proof of the facts, shall order him to be removed to such area or to such settlement, as the case may be, there to be dealt with in accordance with this Act or any rules made thereunder.

(*2*) The rules for the time being in force for the removal of prisoners shall apply to all persons removed under this section :

Provided that an order from the Provincial Government or from the Inspector-General of Prisons shall not be necessary for the removal of such persons.

Duties of police-patel and owners or occupiers of land to give information in certain cases.

17. (*1*) Every police-patel of a village in which any person against whom an order of restriction or order of settlement has been made, and every owner or occupier of land on which any such person resides, and the agent of any such owner or occupier, shall forthwith communicate to the officer-in-charge of the nearest police station any information which he may obtain of the departure of any person from such village or from such land, as the case may be.

(*2*) Every police-patel of a village, and every owner or occupier of land and the agent of any such owner or occupier, shall forthwith communicate to the officer-in-charge of the nearest police station any information which he may obtain of the arrival at such village or on such land, as the case may be, of any person against whom an order of restriction or order of settlement is reasonably suspected of having been made.

Penalties for breach of rules.

18. (*1*) Whoever, being a person against whom an order of restriction or an order of settlement has been made, contravenes a rule made under clauses (*i*), (*ii*), (*iii*) and (*iv*) of sub-section (*2*) of section 22 shall, on conviction, be punishable with imprisonment for a term which may extend,—

(*a*) on a first conviction, to one year,

(*b*) on a second conviction, to two years, and

(*c*) on any subsequent conviction, to three years,

or with fine which may extend to five hundred rupees, or with both.

(*2*) Whoever, being a person against whom an order of restriction or an order of settlement has been made, contravenes any other rule made under section 22 shall be punishable—

(*a*) on a first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both ; and

(*b*) on any subsequent conviction, with imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

(*3*) In computing the period for which an order of restriction or of settlement shall remain in force, any period of imprisonment undergone in execution of a sentence passed under sub-section (*1*) or (*2*) shall be excluded.

(*4*) Any person who commits or is reasonably suspected of having committed an offence made punishable by this section which is not a cognizable offence as defined in the Code may be arrested without a warrant by any officer-in-charge of a police-station or by any police-officer not below the rank of a Sub-Inspector.

Enhanced punishment for certain offences by persons against whom order of restriction or order of settlement has been made after previous conviction.

19. (*1*) Whoever, being a person against whom an order of restriction or an order of settlement has been made and having been convicted of any of the offences under the Indian Penal Code specified in the Schedule, is convicted of the same or of any other offence specified in the Schedule, shall, on conviction, be punishable with transportation for life or with imprisonment of either description for a term which may extend to ten years.

XLV of 1860.

(*2*) Nothing in this section shall affect the liability of such person to any further or other punishment to which he may be liable under the Indian Penal Code or any other law.

XLV of 1860.

Punishment for persons against whom restriction order or settlement order has been made, found under suspicious circumstances.

20. Whoever, being a person against whom an order of restriction or an order of settlement has been made, is found in any place under such circumstances as to satisfy the Court,—

(*a*) that he was about to commit, or aid in the commission of, theft or robbery, or

(*b*) that he was making preparation for committing theft or robbery,

shall, on conviction, be punishable with imprisonment for a term which may extend to three years, and shall also be liable to fine which may extend to one thousand rupees.

Penalty for breach of duties by police-patel, owners or occupiers of land or their agents.

21. Any police-patel, owner or occupier of land, or the agent of any such owner or occupier, who fails to comply with the requirements of section 17, shall be deemed to have committed an offence punishable under the first part of section 176 of the Indian Penal Code.

XLV of 1860.

Rules.

22. (*1*) The Provincial Government may, by notification in the *Official Gazette*, and subject to the condition of previous publication, make rules for the purpose of carrying into effect the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for—

(*i*) the areas to which the movements of any person may be restricted and the nature of the restrictions to be observed by such persons ;

(*ii*) the times and places at which and the manner in which such persons shall report themselves ;

(*iii*) the conditions as to holding passes under which such persons may be permitted to leave the area to which their movements have been restricted or the settlement in which they have been settled;

(*iv*) the conditions to be inserted in any such pass in regard to—

(*a*) the place to which the holder of the pass may or may not go;

(*b*) the persons before whom from time to time he shall be bound to present himself;

(*c*) the period during which he may be absent;

(*v*) any other particulars deemed necessary to be included in an order of restriction;

(*vi*) the circumstances in which persons against whom an order of restriction or an order of settlement has been made shall be required to possess and produce for inspection certificates of identity, and the manner in which such certificates shall be granted;

(*vii*) the management, control and supervision of industrial, agricultural or reformatory settlements;

(*viii*) the works on which, and the hours during which, persons placed in an industrial, agricultural or reformatory settlement shall be employed, the rate at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds of their labour;

(*ix*) the discipline to which persons endeavouring to escape from any industrial, agricultural or reformatory settlement or otherwise offending against the rules for the time being in force, shall be subject and the periodical visitation of such settlement.

Criminal Tribes Act to cease to extend to Province of Bombay.

23. The Criminal Tribes Act, 1924, shall cease to extend to the Province of Bombay with effect from such date not being later than 2 years from the date of the coming into operation of this Act as may be notified in that behalf by the Provincial Government in the *Official Gazette*. VI of 1924.

Savings.

24. Nothing in this Act shall affect the powers of any competent authority under any other law for the time being in force to make an order of restriction or detention and any order of restriction or of settlement passed under this Act in so far as it may conflict with any order made by a competent authority under such law shall be deemed to be inoperative while the order under such law remains in force.

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